EXHIBIT F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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DUMBO MOVING & STORAGE, INC.,

Plaintiff,

v. 22 CV 5138 (ER)

PIECE OF CAKE MOVING & STORAGE LLC,

Oral Argument

Defendant.

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New York, N.Y.
July 24, 2024
11:30 a.m.

Before:

HON. EDGARDO RAMOS,

District Judge

APPEARANCES

ACKNOWLEDGEIP P.C.
Attorneys for Plaintiff
BY: PAUL D. ACKERMAN

-AND-

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(Case called; appearances noted)

THE COURT: Good morning to you all.

This matter is on for a conference.

Is this the first time that I've seen you folks in person in this case?

MR. PERKINS: It is, your Honor.

MR. ACKERMAN: Yes, your Honor.

THE COURT: Good to see all of you.

MR. TURMAN: Same to you, your Honor.

THE COURT: This matter has been around for a little bit. I know there have been specific issues regarding discovery that the parties wanted to raise, but, Mr. Ackerman, if you're going to be speaking on behalf of Dumbo, why don't you tell me, generally speaking, where things are. What is the posture?

MR. ACKERMAN: The posture is frustratingly stalled, your Honor. The parties have not meaningfully exchanged discovery yet. Each side has developed -- we've developed an ESI protocol, we have done the searching, documents are being reviewed for production. They're going to be relatively voluminous. There was quite a bit of e-discovery in this case.

The source code has not been exchanged, largely due to defendants' objections regarding the scope of the definition of "trade secrets." So, I was talking to defendants' counsel as we entered, and we will be submitting a motion to amend the

scheduling order because it calls for depositions to be done by July 31st, and we both agree that that's just not possible.

THE COURT: So, am I to understand that no document discovery has been exchanged as of yet?

MR. ACKERMAN: That's correct, your Honor.

THE COURT: When was this case first filed?

MR. ACKERMAN: It was filed in 2022. It was the subject of a motion to dismiss and an amended complaint. In earnest, we had a protective order as of November of this year, and started working -- we were actually working before that on e-discovery protocol, which was quite the undertaking in itself, and we've been moving forward, just not as quick as, I think, anybody would like.

THE COURT: Okay.

November of last year?

MR. ACKERMAN: Yes.

THE COURT: So, tell me what the holdup appears to be now.

MR. ACKERMAN: The holdup at this point, with respect to source code — and that will lead to expert discovery and other discovery — is the present motion. The holdup on documents, from the perspective of plaintiffs, is just the volume and the review of the ESI protocol, and the search terms provided by defendants pulled in over 200,000 documents, which we are in the process of reviewing. And we're going to get a

rolling production going as soon as practicable, but it's just the volume of ESI that's causing the problem.

THE COURT: Okay. But you can go forward with those productions separate and apart from the source code issue, correct?

MR. ACKERMAN: We believe so, yes, your Honor.

THE COURT: Okay.

And Mr. Perkins?

MR. PERKINS: Yes, your Honor.

In terms of the general scheduling of the case, or would you like me to address the --

THE COURT: Yes. Do you disagree concerning Mr. Ackerman's representation as to where we are?

MR. PERKINS: I think that is generally correct. On behalf of my clients, we are probably within a week away of being ready to produce documents. We served a request on plaintiffs earlier, so we would expect that they would produce documents first, but we're ready to produce documents.

In terms of source code, it was my understanding, your Honor, from your prior ruling on April 9th, that the plaintiffs were obligated to provide their theory of the case first, before defendants provide their documents. And that was, in large part, because of the concern that the plaintiffs would mold their theory of their case, their trade secret theory, around whatever documents the defendants provide and their

operating system.

So, we have been waiting for the plaintiffs. They provided a disclosure, which, for the reasons that I articulated in my letter to your Honor — and I'm prepared to address today — is still insufficient, but they have not produced their source code, which, at least as I understood your Honor's direction, you had said they should produce materials that support their theory of the case before the defendants produce their documents.

So, we are waiting on them. So, in that regard, I do disagree with Mr. Ackerman, but there has not yet been any meaningful production of either source code or documents.

THE COURT: And remind me, did I direct them to provide you with their theory of the case and supporting documents, or did I direct them to provide you with their theory of the case?

MR. PERKINS: It was more the latter, just the theory of their case, but what you also directed was that we should serve, the defendants should serve, interrogatories explicitly requesting information regarding the trade secret identification. The following day, April 10th, we served those interrogatories. We received responses on June 4th, interrogatory responses, which were three weeks late. While normally I would have given an extension, had the plaintiffs asked for one, but they never asked for an extension, and

that's just relevant insofar as their responses are littered with their objections, all of which, I believe, have been waived under applicable law because they were untimely.

And that brings us to the adequacy of their responses, which I'm happy to address whenever your Honor wishes.

THE COURT: Let me just turn to Mr. Chiu.

Did you have any different view as to the status of where we are?

MR. CHIU: We do not, your Honor.

THE COURT: Okay.

So, I directed the plaintiffs to provide you with their theory of the case. They did so. You filed interrogatories, you served interrogatories.

They responded?

MR. PERKINS: They responded, but, in our view, inadequately.

THE COURT: Okay. And they were late.

So, Mr. Ackerman, first of all, why did you file them so late?

MR. ACKERMAN: Approximately two weeks before we filed, we did advise opposing counsel that the substantive responses were still being worked on between counsel and the experts and we would be serving them shortly. Granted, we did not, within the 30 days, request a formal extension, but the responses were provided with the objections. Technically, we

should have provided the objections and said the responses are still being worked on — that was our oversight — but we did provide very detailed interrogatory responses that we believe fully conformed with your Honor's order to identify our trade secrets with particularity.

THE COURT: Mr. Perkins, is he wrong?

MR. PERKINS: He is wrong on the issue of whether the responses stated fair trade secrets with reasonable or sufficient particularity, and I am happy to address that now, if you'd like.

THE COURT: Yes, yes.

MR. PERKINS: I don't know if your Honor has a copy of the unredacted version of the interrogatory responses. We have copies for your Honor --

THE COURT: Yes, why don't you hand them up.

By the way, there is a protective order in this case?

MR. PERKINS: There is.

THE COURT: So that's not an issue with respect to the discovery?

MR. PERKINS: Correct.

I also have, your Honor, a copy of a comparison that my associate prepared that compares the disclosures, the textual disclosures, in the responses of the plaintiffs and their interrogatories to the text of the trade secret as described in the second amended complaint, which I think may be

enlightening to the Court because you'll see there is a substantial overlap between what's in the second amended complaint and what's in the interrogatory responses that have now been labeled restricted, confidential, source code material. And what is new is not very informative.

THE COURT: So, ordinarily, it's a good thing when the documents support the allegations in the complaint, but you're saying that because there's a lot of overlap, then they clearly haven't given you the secret stuff.

MR. PERKINS: Exactly, your Honor. And if they have given us the secret stuff, then their secret is out because it was largely what was in the complaint.

THE COURT: Okay.

MR. PERKINS: So if I may hand this up?

THE COURT: Sure.

MR. PERKINS: And for the record --

THE COURT: I don't want to get too, too far into the weeds, but before we deal with this, perhaps an easier issue to deal with has to do with whether plaintiffs should provide a 2018 version of the source code versus the current, which, I believe, you indicate is what you've been provided with?

MR. PERKINS: Well, we have not been provided with any source code yet. I believe the screen displays -- there were a couple of screen displays in the interrogatory responses, and those appear to be dated in April or May of 2024. I have not

heard from the plaintiffs exactly when the source code that they have not yet produced dates from, but they have indicated it does not date from 2018, which is the date that they claim the misappropriation by my clients occurred, nor does it date from 2020, which is the date that they assert Mr. Plokhykh ceased to have access to the alleged trade secret software.

THE COURT: Okay.

Now, I am not particularly technically competent, Mr. Ackerman, but isn't the relevant source code, the source code that was stolen, if such it was, in 2018? And do you object to turning over that version of the source code?

MR. ACKERMAN: Well, certainly, the 2018 version is relevant, but not for defining the specificity of the trade secrets, which could be defined fully apart from the source code if we could do that with reasonable particularity.

Our position is that the source code that was used to identify the directories and files, which was the archived version of 2023, does identify the asserted trade secrets with particularity. To the extent there were any changes from 2018 to 2023 in the source code from our client, that would actually help the defendants because we would be pointing to something that shouldn't be in their code if it was developed after the code was stolen. We believe that, except for maintenance of the code, that's not going to be the case.

Our only objection to providing the 2018 code,

your Honor, is that at this moment, we still do not have it. The source code was developed by a developer in the Ukraine. The lead developer was killed in action, and the version of the code we have was one that was turned over to another developer to maintain the code in 2023 prior to that gentleman dying in the line of duty.

So, we do have a challenge getting the 2018 code, but we don't believe that that impairs our ability to define what our trade secrets are and establish them with reasonable particularity. If anything, it just becomes a matter of proof, and if our code moved and theirs didn't, then we're going to have the egg in our face because our trade secrets are not in their code.

THE COURT: So, let me just see if I can get to the bottom of this.

So, the developer of the code at issue was a gentleman in Ukraine, who perished in the current war?

MR. ACKERMAN: Correct, your Honor.

THE COURT: But you have some information that that code was somehow transferred to another individual?

MR. ACKERMAN: It's being maintained by another software development company, yes.

THE COURT: Okay.

And are you in touch with that software development company?

MR. ACKERMAN: Yes, we are.

THE COURT: And are they able and willing to provide you with the information that you need?

MR. ACKERMAN: Well, we have the code as it existed in 2023, and that's the version that we are able to produce today. We are still trying to find some way of obtaining an earlier archived version to satisfy --

THE COURT: Where would you find that? Is that also in the Ukraine?

MR. ACKERMAN: It's going to be on some server somewhere accessible by the people in the Ukraine, if there is a person who still has that access.

THE COURT: Okay.

And let me ask you, so far as you are aware, is someone on that?

MR. ACKERMAN: We have been looking into it, but we have been hitting dead ends.

The other option is that we believe that that 2018 source code was taken by Mr. Plokhykh, and discovery from Mr. Plokhykh will reveal that 2018 version as well, your Honor.

THE COURT: Okay. So, the bottom line is you don't have it to give?

MR. ACKERMAN: I do not have it to give at this moment.

THE COURT: And you are undertaking diligent efforts

to obtain it?

MR. ACKERMAN: As diligent as we can in a war zone, yes, your Honor.

THE COURT: I suppose I'm not going to require you to go personally.

MR. ACKERMAN: I would demur; thank you.

THE COURT: So what about that, Mr. Perkins? Does that --

MR. PERKINS: Well, I think we are all saddened by the death of anyone in the Ukrainian war, including one of the developers in this case. Naturally, we'll accept whatever version the plaintiffs are willing to produce, with a reservation of rights regarding their inability to produce the version that we believe is at issue in this case.

THE COURT: Okay.

And, Mr. Chiu, I guess I am not going to require you to — unless you know, one way or the other — put on the record whether or not Mr. Plokhykh took the 2018 version of the software when he left Dumbo.

MR. CHIU: Your Honor, we responded to their discovery requests asking for copies of the source code. We told them expressly that our client, my client, Mr. Plokhykh, was just a sales agent for IT Dev, which is the employer of the developer who developed the code at issue, and we've never had a copy of it, and we don't have copies of it in our possession.

It's not a copy of a source code; it's a bunch of files maintained in a room server someplace. I am not technically savvy either, your Honor, so I cannot -- but what was represented to me was that it's not like a compact disk that we grew up with, and he just puts it in his pocket. It's not like that. It's very complex source code, it was maintained by the employer of the developer who developed the source code at issue, and we do not have it, your Honor. We've never had it.

THE COURT: Again, let me just ask another prefatory question.

This program that we're fighting about, it has to do with moving companies. Why isn't this an off-the-shelf product? What's so particular about this program that was developed by Dumbo?

MR. ACKERMAN: Well, my understanding, your Honor, is that back in 2016 --

THE COURT: And it's a scheduling program, right?

MR. ACKERMAN: Well, it's a fully end-to-end integrated software package that pretty much does all the functions required by a moving company, from receiving quotes, to dispatch, to scheduling multiple jobs, to coordinating storage and moving. It seems like it's a simple endeavor, but moving is now a logistics enterprise, not just two bald guys with a big truck. So the software is actually --

THE COURT: Actually, that's my experience, but --

MR. ACKERMAN: Well, behind those two guys with the big truck is a lot of logistics that are going on unless it's just a small company. But the software is complex, but still, as complex, will fit on an encrypted thumb drive. It's structured software, so it's hundreds of directories with thousands of files that link to each other by the instructions in the code, but it is not an impossible task that Mr. Plokhykh could have taken it, as we suggest. It literally would fit on a thumb drive if you copy the top level directory onto that drive.

THE COURT: Okay.

Mr. Perkins?

MR. PERKINS: Your Honor, I think your question goes to the heart of the issue before you today, which is why is this program an alleged trade secret. And as your Honor probably is well aware, the DTSA, Section 18 U.S.C. 1839, states that the trade secret "must derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information."

So, at the heart of our concern here is Dumbo has failed to make any attempt in this interrogatory response to distinguish what it claims are its trade secrets from publicly

known information, from off-the-shelf software programs as they existed, whether it's back in 2018 or 2020 or 2023. And that is, as the plaintiff recognized in their interrogatory response, their burden. They say, "This rog is straight from the definition in the statute" and "it is ultimately our burden."

While it is their burden — and they have acknowledged that — there is nothing in their interrogatory response that says, oh, our software program, which admittedly uses open source code bases — and they claim that's okay because it's a configuration of publicly available materials — but there's nothing in their interrogatory response that says, this is the trade secret. Yes, we're using publicly available materials, yes, we're using open source code, but we put it together in some unique way that makes it a trade secret, and it's unlike this program, and it's unlike that program, and nothing like this was available because we can distinguish it from all of the publicly available materials at the time.

THE COURT: Well, this configuration was not available.

MR. PERKINS: Correct, but they haven't shown how their configuration was not available and why their configuration is different from what was publicly available. And that is the biggest fundamental problem with their disclosure. Basically what their disclosure is, is

functionalities, a list of 12 functionalities, most of which has been disclosed in their amended complaint. Four of the twelve alleged functionalities are virtually identical to what was in the amended complaint. And I will refer you to the chart, which I have handed up to the Court. If you look at item E, the customer relationship management feature; item F, the seamless integration of data; item H, the seamless online payment system; and item I, the automated payroll processing system, their description, but for a couple of additional words in the note in item E, and then item H, a couple of identical words, is identical to what's in the second amended complaint.

So how this could be an adequate, reasonably particularized description of their trade secret eludes me, especially when they have not made any attempt to explain how an integration of data related to storage and moving was different from what was available publicly or --

THE COURT: Maybe it's just that simple, right?

Was it you, Mr. Ackerman, that used the Kentucky Fried Chicken example?

MR. ACKERMAN: Yes, your Honor.

THE COURT: Okay.

And as he indicated, there is a secret — whether we're talking about Kentucky Fried Chicken or Coke — there is a recipe. Presumably, the recipe is made up of ingredients that we're all familiar with, simple ingredients that you could

probably buy at a supermarket — at least we hope, right — and it's how they bring it together, their particular processes, that makes it the trade secret.

So, why shouldn't that apply here as well?

MR. PERKINS: Well, that's the problem, your Honor. Yes, I recognize that the Kentucky Fried Chicken formula may use salt and pepper and paprika, and those are publicly available elements, but Kentucky Fried Chicken would have to explain how their combination of those publicly available elements differs from what was known at the time their trade secret was created. And under the *Big Vision* case, your Honor, that's 1 F.Supp.3d 224, affirmed by the Second Circuit at 610 F. App'x 669, and I'll quote, "A plaintiff asserting the combination trade secret must demonstrate that the way in which the publicly available components fit together is unique and not publicly known."

That's the law of the circuit, that's the law of this court, and there's been no attempt in the interrogatory response to explain how this all fits together in some unique way, how what they're claiming is publicly available, somehow the combination wasn't publicly available. That's what's been missing from their responses.

THE COURT: At base, aren't we really talking about the timing of this discovery? I mean, presumably, there will come a time when you will get all of this, right?

MR. PERKINS: Well, yes, your Honor --

THE COURT: And why should it be now? Or why isn't what has been provided thus far sufficient at this juncture to allow the parties to move forward and exchange discovery?

MR. PERKINS: So, a couple of answers why:

One, what we have been provided with is, as I've said, essentially a slightly expanded version of what was in the second amended complaint; what was additionally provided were a few screen displays that were barely legible and don't say anything about how they're different from what's in the public domain; and third was a laundry list of computer directories and files. That laundry list is meaningless because, as Mr. Ackerman pointed out, there are thousands and thousands of lines of code in each of the files, potentially hundreds of files in each of the directories, and the plaintiff hasn't said, oh, this is our old trade secret, the plaintiff has said these files, quote, may be relevant, end quote.

So they're trying to shift the burden to the defendants to look through tens of thousands or hundreds of thousands or maybe millions of lines of code to find out where the special sauce is. And this is particularly complicated because much of that code is open source.

So, if there's some special sauce here, they need to explain, and point out to the defendants, where that special sauce is that somehow makes this publicly available source code

a trade secret.

THE COURT: Well, again, isn't that just a matter of timing? You have, let's say, the universe of lines of code. Maybe that's all they're required to give you at this point, and then further discovery — depositions, et cetera, expert testimony — will delve into whether or not they actually have a case for the theft of trade secrets.

MR. PERKINS: The problem, your Honor — and we have addressed this issue and briefed this issue when you made your ruling on April 9th that led you to say that the plaintiffs need to provide their theory of the case before defendants produce discovery — is that in the *DeRubeis* case, which the plaintiffs and defendants have cited, the Court talks about the concern that the plaintiff will mold its trade secret theory around whatever it gets from the defendants.

So, by getting an amorphous laundry list of computer directories, with an amorphous textual description that doesn't amplify very much from their amended complaint, the plaintiffs will be in the position to say, oh, here's your program, well, this is our trade secret, and that's our trade secret, and now we can identify with particularity because now we see what's in your actual program.

THE COURT: But won't you be able, if that should come to pass based on all of the information that will be provided, point that out and say, aha, what you've done is you've gotten

my information, and now you have molded your theory to conform with what I have given you? So, will you necessarily be prejudiced if you will be able, based on the information that everyone will have, to point that out?

MR. PERKINS: Well, your Honor, I certainly respect the wisdom of your ability to say, oh, I see what they said in the amended complaint, and I see what they say in the interrogatory responses, and now, after discovery, now they say something totally different. I trust your Honor will be able to decipher all of that.

On the other hand, the burden of the time and expense that the defendants need to go through, defendants' expert needs to go through, to review all of the source code to try to figure out where this theoretical special sauce is, is going to be prejudicial to us. And this has been a case where, as your Honor has pointed out, it's been around for two years, we've had motion practice, we have reviewed extensive ESI, and we're still at the early stages of discovery, and my client has spent a fair amount of money on this case thus far, including on motions that your Honor had said were ill-advised to have been made regarding potential disqualification.

So, my concern is, yes, your Honor, we could ultimately point out to you what we believe our concern is that plaintiffs may do, but, in the meantime, it will have to spend thousands -- tens of thousands, maybe hundreds of thousands, of

dollars pouring through their code trying to determine where the secret sauce is that we can then dispel.

And the courts have said that's not the burden of the defendants, that's not the burden of the Court, that's the plaintiff's burden. And that's why we're asking, and that's why I quoted the statute, and the plaintiff recognizes it is ultimately their evidentiary burden to show how their trade secret differs from what is publicly known, what is generally known, what's readily ascertainable.

And as --

THE COURT: I think you mentioned that you have case law that says you can't just give us the elements, you have to tell us how they come together, if what you are alleging is a configuration.

MR. PERKINS: Exactly, your Honor. The Second Circuit, the Southern District, are clear on that, that, particularly when you're claiming, as they are, it's a configuration or a compilation of publicly available elements, then explaining how it differs from what's publicly available is critical.

THE COURT: Is there an attorney eyes only clause in the protective order?

MR. PERKINS: There is, your Honor.

MR. ACKERMAN: Yes, your Honor.

THE COURT: So, Mr. Ackerman, why shouldn't that be

sufficient for you at this juncture to provide that additional level of detail that Mr. Perkins is talking about?

MR. ACKERMAN: Well, the additional level of detail that Mr. Perkins would like, where he is presumably requesting us to describe the operation down to the source code level, is probably hundreds of hours of expert witness work that will be part of expert discovery and expert reports, but it's probably at least 10,000 hours per illustrated trade secret. We have identified 12 of these trade secrets, but, at this point, we are assuming that those features were made in their code that we believe was appropriated in 2018.

THE COURT: I'm sorry, can you repeat that for me? You are assuming what?

MR. ACKERMAN: In our allegation of 12 trade secrets that we have identified with particularity, at this point, all we can do is assume that these features are still being used by defendants and are still embodied in the source code that we believe was misappropriated in 2018.

In theory, they could have substantially modified their code, and maybe six of these features that we identified are completely irrelevant. Spending a hundred thousand dollars on irrelevant features because they won't provide basic discovery to allow us to say, yes, our working assumption of this case is correct or incorrect, because they won't provide enough discovery for us to even confirm our allegations, is

shifting the burden too far onto the plaintiffs. The purpose of defining the trade secret with particularity is to give defendants notices of what the allegations are and define the scope of discovery. Here, we've got discovery pretty well defined. There is a specific package of software that we allege was misappropriated that's subject to copyright claims and trade secret claims.

So, discovery could go on globally because the copyright is actually broader than the trade secret, but when you look at the specific detail of the code, to get down to that level of granularity before we even understand that our assumption is correct based on our belief of the case, we are now putting a significant burden on the plaintiffs --

THE COURT: Will you necessarily have to get down to that level of particularity?

MR. ACKERMAN: That's what Mr. Perkins is asking for. So, if you look at our -- the schedule that is attorneys' eyes only source code — I don't want to go into too much detail on the record, it's confidential — it's not just a random collection of directories and files, as Mr. Perkins would suggest. Our expert has defined the feature in words, and then, where appropriate, provided a screenshot illustrating how that feature is operationally presented, and then describes the directories of the hundreds of directories where the source code is located, and then identifies key files, because this is

programmed -- structured programming language, your Honor. It's not like the old days where you had a thousand lines of code start to finish and it runs top to bottom. Each of these directories has a file. That file might call three other files in three other directories. So it's not going to be necessarily identifying lines 8 through 15 is a trade secret. It's going to be a pretty extensive explanation of the operation of the code. And that shouldn't be necessary at this point, when the defendants' needs are well covered here.

THE COURT: Mr. Perkins makes the point there are these allegations in the complaint, I directed you to provide additional detail, and the additional detail is not substantially more than what's in the complaint.

So, what about that?

MR. ACKERMAN: On that point, I significantly disagree. In the complaint, we had a half-page list of bullet items, high-level description of the features. We now have --

THE COURT: And in the interrogatory responses?

MR. ACKERMAN: We had a seven-page interrogatory response with a 21-page schedule in which that schedule details each of the 12 features with particularity, including a description of the operation, which does overlap significantly with the complaint because it's the same trade secret, but then beneath that, we explain where the directories are that contain that source code and at the specific files where that code is

located.

We can't go molding our case randomly at this point, your Honor. If we point to something that is outside of those directories and files, Mr. Perkins will have grounds to say, hey, that's not the trade secret that you asserted.

THE COURT: And does Mr. Perkins have those directories and files that are called out by the --

MR. ACKERMAN: When we exchange our source code, that will all be laid out right in front of him, your Honor. There's no secret to the structure of the code — it's detailed, it's extensive, it's complex. But even Mr. Perkins could look at it without an expert and say, I found the directory, I found the file. He may not know what the file is because we're not the programmers, but he would certainly be able to know what we're talking about, and his technical expert would certainly be able to know what we're talking about.

THE COURT: I just want to make sure that I don't lose you because what I think Mr. Perkins was referring to in this chart was the difference between the allegations and your interrogatory responses.

What I hear you describing is the difference between the interrogatory responses and the actual source code. And my question is: Shouldn't there be some greater level of detail in the interrogatory responses?

MR. ACKERMAN: Well, your Honor, there absolutely is

tremendously more detail in the interrogatory responses. As I said, it's Schedule A, which was provided in the copy of the interrogatory responses that you have that are unredacted. If we just look at, for example, starting on page 5 of that, where, in their chart, they say, "Integrated scheduling dispatch crew assignment tools, including" --

THE COURT: I'm sorry, you need to slow down. You're at page 5?

MR. ACKERMAN: Page 5 of the schedule, yes.

THE COURT: Well, of the interrogatory responses?

MR. ACKERMAN: It's the Schedule A of the interrogatory responses, your Honor.

THE COURT: Schedule A.

Do I have Schedule A?

MR. PERKINS: Yes, your Honor. It should be attached to the interrogatory responses, and separately paginated.

THE COURT: Schedule A. Okay.

Now, what are you reading from?

MR. ACKERMAN: If we just look at B, which is the second trade secret, starting on page 5 --

THE COURT: Hold on.

Okay.

MR. ACKERMAN: So, in the chart that they handed up, they showed the difference in language between what's in the complaint and what's in that first part of B, which is the

verbiage describing the trade secret at a high level. What they have ignored is the fact that there is now a screenshot showing this feature in its operation, and then a list of eight specific directories that implement this function, and then a listing of a number of files that implement that. And it's broken down further because that feature is broken down into four distinct features — dispatch and crew assignment now has its own set of directories and files, dispatch and view has another screenshot plus directories and files, and the last one, the module, has the screenshot and directories.

So, we do take exception with the characterization that we have not provided far more detail than is in the complaint and sufficient detail for them to fully understand what we are alleging here.

MR. PERKINS: Your Honor, if I may respond?

THE COURT: Sure.

MR. PERKINS: So, I hear Mr. Ackerman expressing concern about his expert having to carry out their burden and whose burden is it, and I've already addressed that we believe it's plaintiff's burden, but I don't think what is required here is necessarily giving us every single line of code in which the trade secrets could be exemplified. That would be helpful, but that's not even required. What's required, and what they recognize as their burden, is to distinguish what they are claiming is the trade secret from what's publicly

known.

And your Honor can read through their 20-page interrogatory response, putting aside the objections and putting aside their laundry list of directories, and you will find nothing — nothing — that actually explains why this compilation of publicly available source code is somehow a unique trade secret. And that's what we're asking for, your Honor. We're asking for a textual explanation that says, this is a special sauce trade secret because here are the 20 programs that were off-the-shelf available in 2018 or 2020 or 2023, but none of those programs could do this. And that disclosure, which is their burden to do, and the courts make clear, is missing. Rather, the text describes functionalities, the end results.

And under applicable case law that I have cited, the Second Circuit and the Southern District make clear that simply listing functionalities isn't sufficient. And I cite to the *Next Communications v. Viber Media* decision by the Second Circuit, 758 F. App'x 46, and the Second Circuit said, "Plaintiffs' declaration fails to provide any information that shows how the plaintiffs' trade secret works as a whole. For example, the plaintiff describes the functions of the various components, not how they function as an operating system."

So, they need to go in their textual description beyond simply saying, whoa, we have a software that has emails

and chat functions integrated into it, which, as I'm sure, your Honor, we don't need to be particularly sophisticated to know that email and chat functions being integrated into a software program is probably as common as the Windows feature can be.

So, what is missing is what makes this Dumbo Moving program so unique, and they admittedly use open source elements, but they don't say, notwithstanding all of those open source elements, we've combined it in some way that's so unique, and it's different from what was publicly available and publicly known and could be bought off the shelf. That's what's missing, and that shouldn't require their expert to spend thousands of hours pouring through the lines of code, but it should be something, your Honor, as you indicated on April 9th when we were before you, that they should have known two years ago when they filed their case. They should have known, before they came to federal court and signed a Rule 11 certification, what the trade secret was and how this software differed from what was publicly available. And I'm still waiting for that disclosure. And that's the key disclosure that's required under the DTSA, and it hasn't been provided.

THE COURT: Well, let me come back to the issue of timing. Let's say I direct Mr. Ackerman to give you that. Why can't I say to you, and you turn over your source code, too?

MR. PERKINS: Subsequent to their disclosure of the

source code?

THE COURT: At the same time.

MR. PERKINS: Well, we could do that, your Honor — if you direct us to do that, we'll obviously comply with your directive — assuming we've gotten the disclosure of how it distinguishes from what was publicly available prior to the production of the source code, because that's the molding concern that --

THE COURT: I'm sorry, so as long as plaintiffs give you first how their program differs?

MR. PERKINS: Correct.

THE COURT: Before both sides exchange the source code?

MR. PERKINS: Correct. Because what Mr. Ackerman is saying is, oh, well, if the defendants' program has an email chat feature, well, end of the case, we can prove they stole it from us. Well, that's not the end of the case, your Honor, because I can point out 20 programs that were available at the relevant time that would have email chat features.

And so, the key is, how is this different from what was publicly available, and that's not what we have gotten from the plaintiff, and that's their burden under the statute, and that's undisputed.

THE COURT: Mr. Ackerman?

MR. ACKERMAN: Yes, back in 2016, when this software

was being developed, our understanding is that there was no off-the-shelf integrated software that performed these functions. Sitting here today, we are not aware of any software that performs these functions as we have noted them.

Mr. Perkins seems to be suggesting that we need a book of wisdom where we know everything that happened before, as opposed to knowing that we developed this based on our knowledge of the industry, and we have a good-faith belief that what we have done is secret and different.

The cases where you see a lot of the discussion about distinguishing from what is in the public domain, like I think it was the big video case that Mr. Perkins was talking about, the plaintiff in that case had filed a patent application where he disclosed everything that was in his trade secrets allegation, and he could not distinguish his trade secrets allegation from his patent application.

That is very different than saying there is a universe of unknown moving company software, and that we have to be able to analyze each and every piece of software on the market to say, yes, we still believe we have a trade secret.

THE COURT: Now, I'm seeing those pink trucks all over the place now.

MR. ACKERMAN: We'll be very happy to report that to our client.

THE COURT: Very well.

Look, this is not going to get resolved today. So, Mr. Perkins, you can make your motion, but, as I sit here, we've got to move off of this dime. And, again, I don't know that the level of detail that Mr. Ackerman has provided so far in terms of a description textually as to what their trade secrets are is sufficient, but I can't imagine that they would be required at this juncture to provide the level of detail, Mr. Perkins, that you are suggesting, because that's what comes through normal discovery, expert discovery, et cetera.

So, you can make your motion. I would advise the parties to continue to speak, and to continue to speak about how we can get this done easier. Again, I keep coming back to timing because if this goes forward, everyone is going to know everything, and so, why are we spending all this time fighting about these sorts of issues.

But how much time do you want, Mr. Perkins? Two weeks? Three weeks?

MR. PERKINS: Three weeks should be fine, your Honor.

THE COURT: Okay.

Three weeks to respond, one week to reply.

MR. PERKINS: And, your Honor, I hear you loud and clear. And, again, I'm trying to minimize the burden on plaintiffs while maximizing the benefit to defendants.

THE COURT: Sure.

MR. PERKINS: And that's why I would suggest, rather

than what Mr. Ackerman is concerned about with the expert delineating lines of code, is to provide us with a greater textual description that addresses the burden under the statute. And I will make that the focus of our motion.

THE COURT: Because, certainly, the point that you made, Mr. Perkins, is that, look, you know, you've brought this case, Mr. Ackerman, you say that your trade secrets were stolen, tell them what the trade secrets are. It shouldn't be that difficult. Well, I don't know.

MR. ACKERMAN: Okay.

THE COURT: Okay.

So, Ms. Trotman, do we have actual dates of three weeks, three weeks, one week?

THE DEPUTY CLERK: Yes.

The motion is due August 14; the response is due September 4; and a reply is due September 11.

MR. PERKINS: And, your Honor, thank you.

How would you like us to address the broader scheduling issues in the meantime while we --

THE COURT: You should speak, obviously, with Mr. Ackerman and Mr. Chiu, and I will grant whatever reasonable request for an extension you guys ask for.

Anything else you wanted to put on the record, Mr. Chiu?

MR. CHIU: No, your Honor. Thank you very much.

THE COURT: Okay.

Thank you, everyone.

MR. PERKINS: Thank you, your Honor.

MR. ACKERMAN: Thank you, your Honor.

MR. TURMAN: Thank you, your Honor.

(Adjourned)